

## **ORDINANCE NO. 20-019**

### **ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PACIFIC GROVE APPROVING A CONCESSION LEASE BETWEEN PACIFIC GROVE ADVENTURES, INC. AND THE CITY OF PACIFIC GROVE FOR RENTAL OF RECREATION EQUIPMENT AT THE LOVER'S POINT MUNICIPAL BEACH**

#### **FACTS**

- 1.** City owns the building located at the Lover's Point Municipal Beach, generally known as "The Cave" and located near 624 Ocean View Blvd ("PREMISES").
- 2.** Adventures by the Sea, Inc. and its owners Frank and Michelle (collectively "Adventures by the Sea, Inc.") have been the tenant at the PREMISES since June 1994 operating a recreation equipment rental.
- 3.** The last Concession Agreement with Adventures by the Sea, Inc. expired by its terms on October 31, 2008.
- 4.** Adventures by the Sea, Inc. has been leasing the PREMISES on a month-to-month basis since 2008.
- 5.** In December 2019, Adventures by the Sea, Inc. changed its name and corporate identity to Pacific Grove Adventures, Inc. The owners remain Frank and Michelle Knight.
- 6.** Pacific Grove Adventures, Inc., previously known as Adventures by the Sea, Inc., has been City tenants with exceptional financial performance and business operation.
- 7.** The concession lease is not an expanded use of the PREMISES by Pacific Grove Adventures, Inc.
- 8.** The concession lease allows Pacific Grove Adventures, Inc. to rent single and tandem kayaks, standup paddleboards, bicycles, electric bicycles, 4-wheel surrey bicycles, bike accessories, beach toys including boogie boards, soft top surfboards, snorkeling equipment and wetsuits, and to sell sundry items associated with beach and recreational use on PREMISES.
- 9.** The PREMISES is designated Open Space Recreational ("OS-R") in city's Local Coastal Program's Land Use Plan ("LUP"). The LUP specifically authorizes access to the water, swimming and boating, and bicycling on designated lanes, paths and areas open to other vehicles as appropriate use in the OS-R area.
- 10.** City's zoning regulations applicable to the area at issue ("O District," Chapter 23.42, Pacific Grove Municipal Code) include a statement of purpose noting that the O District

provides areas set aside for, among other things, "public recreational, waterfront, or beach areas ...."

11. The concession is an allowed recreational use accessory to the "waterfront area" as described in the "O" zone (PGMC, Section 23.42.020(a)). No separate discretionary land use entitlement is required.
12. The concession does not constitute "development" as defined by the City's Local Coastal Program (LCP) and its implementing ordinances. No Coastal Development Permit is necessary.
13. Leasing of the PREMISES will not have a significant effect on the environment and is found exempt from the California Environmental Quality Act (CEQA) per Section 15301 of the CEQA Guidelines which allows for the leasing, licensing, repair, and maintenance of public or private structures.

**NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE:**

SECTION 1. The foregoing Facts are adopted as findings of the City Council as though set forth in fully within the body of this ordinance.

SECTION 2. The request for concession agreement hereby is approved, in the form attached hereto, titled AGREEENT FOR RECREATION EQUIPMENT RENTAL CONCESSION AT THE LOVER'S POINT MUNICIPAL BEACH.

SECTION 3. In the event of legal challenge to any aspect of this approval, Pacific Grove Adventures shall defend and save harmless city against any claim, judgment or liability arising out of such challenge. Pacific Grove Adventures may, in the event of such challenge and as an alternative to its obligation to defend and save harmless, terminate the concession agreement.

SECTION 4. As a condition of the approval hereby made, Pacific Grove Adventures shall not only execute the concession lease, but shall also sign and acknowledge the findings, terms and conditions of this resolution on a line to be provided below by the city clerk.

SECTION 5. The City Manager is directed to execute all documents and to perform all other necessary City acts to implement effect this Ordinance.

SECTION 6. Severability. If any provision, section, paragraph, sentence, clause or phrase of this ordinance, or any part thereof, or the application thereof to any person or circumstance is for any reason held to be invalid or unconstitutional by a court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance, or any part thereof, or its application to other persons or circumstances. The City Council hereby declares that it would have passed and adopted each provision, section, paragraph, subparagraph, sentence, clause or phrase thereof, irrespective of the fact that any one or more sections, paragraphs, subparagraphs, sentences, clauses or phrases, or the application thereof to any person

or circumstance, be declared invalid or unconstitutional.

SECTION 7. In accord with Article 15 of the City Charter, this ordinance shall become effective on the thirtieth (30th) day following its passage and adoption.

**PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF PACIFIC GROVE**  
this 5<sup>th</sup> day of August, 2020, by the following vote:

AYES: Mayor Pro Tem Huitt, Councilmembers Amelio, Garfield, Smith, and Tomlinson

NOES: Mayor Bill Peake and Councilmember McAdams.

ABSENT: None.

APPROVED:

DocuSigned by:

*Bill Peake*

6C7CB8B632C34D9...

\_\_\_\_\_  
BILL PEAKE, Mayor

ATTEST: 8/8/2020

DATED: \_\_\_\_\_

DocuSigned by:

*Sandra Kandell*

4F11A61C850D4E1...

\_\_\_\_\_  
SANDRA KANDELL, City Clerk

APPROVED AS TO FORM:

DocuSigned by:

*David C. Laredo*

F06545E32B2846E

\_\_\_\_\_  
DAVID C. LAREDO, City Attorney